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6 **UNITED STATES DISTRICT COURT**  
7 **DISTRICT OF NEVADA**  
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9 CECIL LAMAR HALL,

10 *Petitioner,*

11 vs.

12 DIRECTOR, DEPARTMENT OF  
13 CORRECTIONS, *et al.*,

14 *Respondents.*  
15

2:08-cv-01825-GMN-GWF

ORDER

16 This represented habeas matter under 28 U.S.C. § 2254 comes before the Court on  
17 petitioner's motion (#17) for leave to conduct discovery.

18 ***Background***

19 Petitioner Cecil Lamar Hall seeks to set aside his 2006 Nevada state conviction,  
20 pursuant to a guilty plea, of lewdness with a child under fourteen years of age. He is  
21 sentenced to a life sentence with eligibility for parole after ten years.

22 Petitioner seeks leave under Rule 6(a) of the Rules Governing Section 2254 Cases  
23 (the "Habeas Rules") to seek discovery of: (1) his medical, psychiatric, psychological, bed  
24 history, and inmate files from his detention at Clark County Detention Center (CCDC) during  
25 his detention leading up to and around the time of his conviction; (2) his medical, psychiatric,  
26 and psychological files from his incarceration with the Nevada Department of Corrections  
27 (NDOC) thereafter; and (3) all recordings of police interviews of himself and witnesses in  
28 connection with the investigation of the charges brought against him.



1 support for a claim. See, e.g., *Pham v. Terhune*, 400 F.3d 740, 743 (9<sup>th</sup> Cir. 2005); *Jones v.*  
 2 *Wood*, 114 F.3d 1002, 1009 (9<sup>th</sup> Cir. 1997). See also *Osborne v. District Attorney's Office*,  
 3 521 F.3d 1118, 1133 (9<sup>th</sup> Cir. 2008), *reversed on other grounds*, \_\_\_ U.S. \_\_\_, 129 S.Ct.  
 4 2308, 174 L.Ed.2d 38 (2009)(in discussing its precedent in *Jones* as to habeas discovery, the  
 5 Ninth Circuit emphasized the availability of discovery that, as emphasized by the Court of  
 6 Appeals, only “may establish” a factual basis for the petitioner’s claim).

### 7 ***Discussion***

8 In a very brief response, respondents contend that petitioner has not elaborated as to  
 9 what efforts were made to obtain the requested information or why the information is needed,  
 10 that NDOC records generated after petitioner’s plea have no bearing on petitioner’s mental  
 11 status when he entered the plea, and that the discovery requests constitute nothing more than  
 12 a “fishing expedition.”

13 The Court is not persuaded.

14 First, it is unclear what respondents expect petitioner to additionally show with regard  
 15 to efforts to obtain the CCDC and NDOC records and the police interview recordings. It does  
 16 not appear from past cases that the government entities in question generally produce such  
 17 materials voluntarily on request without a court order. If respondents’ position instead is that  
 18 federal habeas counsel in fact can obtain such materials upon a simple request without a  
 19 court order, that of course would help expedite matters of this nature significantly.

20 Second, petitioner in fact has adequately outlined why the information is sought.

21 Third, later medical and psychiatric records potentially can shed light upon conditions  
 22 that existed previously. The logic advanced that such later-generated records can have no  
 23 bearing as to an individual’s condition at a prior time is flawed.

24 Finally, respondents’ frequently-repeated reliance upon the “fishing expedition” refrain  
 25 rarely has persuaded this Court to deny federal habeas discovery.<sup>1</sup>

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 27 <sup>1</sup> See, e.g., *Allen Koerschner v. Warden*, 3:05-cv-00587-ECR-VPC, #60, at 3 n.1 (rejecting same  
 28 argument based on same authority). Respondents rely upon *Rich v. Calderon*, 187 F.3d 1064 (9<sup>th</sup> Cir. 1999).

(continued...)

1 IT THEREFORE IS ORDERED that petitioner's motion (#17) for leave to conduct  
 2 discovery is GRANTED such that the Court authorizes petitioner to seek production of the  
 3 materials specified in the motion. No further prior authorization from this Court shall be  
 4 required pursuant to Habeas Rule 6 in order to pursue specific discovery requests (such as,  
 5 for example, requests for production or third-party subpoenas) to obtain the discovery sought.

6 IT FURTHER IS ORDERED that the certification requirements of Rules 26(c)(1) and  
 7 37(a)(1) of the Federal Rules of Civil Procedure and Local Rule LR 26-7 shall apply to any  
 8 disputes with regard to the discovery allowed herein. The parties shall confer and endeavor  
 9 in good faith to resolve any discovery disputes in this regard, and they shall seek court  
 10 intervention only as a last resort. The provisions of Rules 26 through 37 as to discovery  
 11 sanctions shall apply. Any discovery matters in this case, including any emergency discovery  
 12 disputes under Local Rule LR 26-7(c), will be handled by the Presiding District Judge.

13 IT FURTHER IS ORDERED that petitioner shall have sixty (60) days from entry of this  
 14 order to pursue the discovery in question. Thereafter, petitioner shall have until ninety (90)  
 15 days from entry of this order to file either a second amended petition, if necessary, or a notice  
 16 that petitioner is not seeking to amend the petition further as of that time. The Court  
 17 thereafter will screen the pleadings then on file prior to ordering further action in the case.

18 DATED this 9th day of August, 2010.

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 23 \_\_\_\_\_  
 24 GLORIA M. NAVARRO  
 25 United States District Judge

26  
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 28 <sup>1</sup>(...continued)

In *Rich*, however, the petitioner, who filed his petition ten years after his conviction and two years after the conviction became final, initially filed a petition that was "rife" with unexhausted claims. After being given an additional four-year opportunity to exhaust his claims, petitioner filed an amended petition that once again contained unexhausted claims. The district court then gave the petitioner an opportunity to identify which claims had been exhausted, which claims actually presented a federal question, and which claims might provide a basis for habeas relief if favorable evidence was developed. After five months and a full day of argument, the petitioner was unable to identify claims that might colorably entitle him to relief. See 187 F.3d at 1067. *Rich* thus is far afield from the present case.